

United States Civil Service Commission

FPM Letter 731-3

Federal Personnel Manual System

FPM Letter 731-3

SUBJECT: Suitability Guidelines for Federal Employment

Published in advance
of incorporation in FPM
Supplement 731-1
RETAIN UNTIL SUPERSEDED

Washington, D. C. 20415
July 3, 1975

Heads of Departments and Independent Establishments:

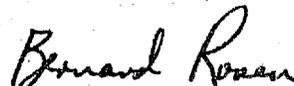
The Commission has approved new guidelines for evaluating the suitability of individuals for Federal employment.

The guidelines amplify revised suitability standards, approved by the Commission earlier following thorough consideration and consultation with Federal agencies and interested organizations. Both the standards and the guidelines fully reflect significant court decisions, the Government's need to maintain efficiency of operations, and the rights of individuals.

The new guidelines are based on the concept that each case must be decided on its own merits and that all decisions regarding the fitness of applicants or employees should be made in a manner that will promote the efficiency of the service while assuring fair, impartial, and equitable treatment of the individual.

Attached are a copy of the revised suitability standards and a copy of the new guidelines, which will be issued as an FPM Supplement. Agencies should immediately follow these in making suitability determinations as authorized by section 2-1b of subchapter 2, Federal Personnel Manual chapter 731.

By direction of the Commission:


Bernard Rosen
Executive Director

Attachments

Inquiries: Bureau of Personnel Investigations, 63-26152

CSC Code: 731, Suitability

Distribution: Approved For Release 2002/03/25 : CIA-RDP79-00498A000200120050-1

Revision of Subpart B,
Suitability Disqualifications

Section 731.201. Authority. Subject to subpart C of this part, the Commission may deny an applicant examination, deny an eligible appointment, and instruct an agency to remove an appointee when the Commission determines this action will promote the efficiency of the service.

Section 731.202. Commission determination.

(a) General. In determining whether its action will promote the efficiency of the service, the Commission shall make its determination on the basis of:

(1) Whether the conduct of the individual may reasonably be expected to interfere with or prevent effective performance in the position applied for or employed in; or

(2) Whether the conduct of the individual may reasonably be expected to interfere with or prevent effective performance by the employing agency of its duties and responsibilities.

(b) Specific factors. Among the reasons which may be used in making a determination under paragraph (a) of this section, any of the following reasons may be considered a basis for disqualification:

(1) Delinquency or misconduct in prior employment;

(2) Criminal, dishonest, infamous or notoriously disgraceful conduct;

(3) Intentional false statement or deception or fraud in examination or appointment;

(4) Refusal to furnish testimony as required by section 5.3 of this chapter;

(5) Habitual use of intoxicating beverages to excess;

(6) Abuse of narcotics, drugs, or other controlled substances;

(7) Reasonable doubt as to the loyalty of the person involved to the Government of the United States; or

(8) Any statutory disqualification which makes the individual unfit for the service.

(c) Additional considerations. In making its determination under paragraph (a) of this section, the Commission shall consider the following additional factors to the extent that these factors are deemed pertinent in the individual case:

- (1) The kind of position for which the person is applying or in which the person is employed, including its sensitivity;
- (2) The nature and seriousness of the conduct;
- (3) The circumstances surrounding the conduct;
- (4) The recency of the conduct;
- (5) The age of the applicant or appointee at the time of the conduct;
- (6) Contributing social or environmental conditions;
- (7) The absence or presence of rehabilitation or efforts toward rehabilitation.

Suitability Guidelines for Federal Employment

Table of Contents

- Part I Introduction
- Part II Factors to be considered
 - A. General Factors
 - B. Specific Factors
 - C. Additional Factors
- Part III Guidelines for Applying Specific Factors
 - A. Delinquency or misconduct in prior employment
 - B. Criminal, dishonest, infamous or notoriously disgraceful conduct
 - 1. Criminal conduct
 - (a) Arrests
 - (b) Convictions
 - (c) Indictments
 - (d) Juvenile crimes
 - (e) Expunged records
 - (f) Pardons
 - 2. Dishonest conduct
 - 3. Infamous or notoriously disgraceful conduct
 - C. Intentional false statement or deception or fraud in examination or appointment
 - D. Refusal to furnish testimony as required by section 5.3 of the Civil Service Rules
 - E. Habitual use of intoxicating beverages to excess
 - F. Abuse of narcotics, drugs, or other controlled substances
 - G. Reasonable doubt as to the loyalty of the person involved to the Government of the United States
 - H. Any statutory disqualification which makes the individual unfit for the service
- Part IV Guidelines for applying Additional Factors
 - A. The kind of position for which the person is applying or in which the person is employed, including its sensitivity
 - B. The nature and seriousness of the conduct
 - C. The circumstances surrounding the conduct
 - D. The recency of the conduct
 - E. The age of the applicant or appointee at the time of the conduct
 - F. Contributing social or environmental conditions
 - G. The absence or presence of rehabilitation or efforts toward rehabilitation

Part I
INTRODUCTION

These guidelines provide a basis for government-wide uniformity in making suitability determinations for Federal employment. The Civil Service Commission (hereinafter referred to as "the Commission") has prime responsibility for determining the suitability of applicants for, and appointees to, nonsensitive and noncritical sensitive positions in the competitive service. The employing agency has this responsibility for positions in the excepted service and, by delegation from the Commission, for all critical sensitive positions.

The many complexities in human behavior preclude the development of a formula to assist the examiner in deciding individual cases. The guidelines are based on the concept that each case must be decided on its own merits. They attempt to provide a setting in which intelligent and uniform suitability judgments are possible, and are intentionally broad and general, demanding dependence on sound judgment, mature thinking and in-depth analysis.

Examiners must consider all the information of record, both favorable and unfavorable, and assess it in terms of its relevance, recency, and seriousness. They should also be mindful that their objective is to evaluate the fitness of applicants and employees in a manner that will promote the efficiency of the service while assuring fair, impartial, and equitable treatment of the individual. Protecting the interests of the government is a first responsibility, but it also must be remembered that suitability decisions directly affect the lives of people, their ambitions, their desires, their families, and their careers.

An applicant may not be denied consideration for employment and an employee may not be removed except for such cause as will promote the efficiency of the service. An adverse action resulting from conduct falling within the disqualifications set forth in Section 731.202 of the Civil Service Regulations may be taken only if it can be shown that the conduct may reasonably be expected to interfere with the ability of the person to function in the position or the agency's ability to discharge its responsibilities. In other words, there must be some rational connection between the individual's conduct and the efficiency of the service.

Keys to equitable suitability determinations are the adequacy of the information and the objectivity of decisions based upon it. Adverse decisions based solely on information furnished in an application or related papers should be extremely rare. In most cases additional facts must be obtained to enable the examiner to determine whether the conduct in question is of such a nature that employing the person would impair the efficiency of the service. Disqualification is appropriate only if the information at hand supports a conclusion that the conduct may reasonably be expected to interfere with effective job performance or discharge by the agency of its responsibilities.

Application of the General, Specific, and Additional Factors set forth in this part should result in decisions which are fair to the individual and to the concept that any personnel action should promote the efficiency of the service. The Specific and Additional Factors are discussed in detail in Parts III and IV.

General Factors

In determining whether an action will promote the efficiency of the service, the evaluator shall make the decision on the basis of these considerations:

- (1) Whether the conduct of the individual may reasonably be expected to interfere with or prevent effective performance in the position applied for or employed in; or
- (2) Whether the conduct of the individual may reasonably be expected to interfere with or prevent effective performance by the employing agency of its duties and responsibilities.

Specific Factors

Any of the following may be considered a basis for disqualification in making a determination on the application of (1) or (2) above:

- (1) Delinquency or misconduct in prior employment;
- (2) Criminal, dishonest, infamous or notoriously disgraceful conduct;
- (3) Intentional false statement or deception or fraud in examination or appointment;
- (4) Refusal to furnish testimony as required by section 5.3 of the Civil Service Rules;
- (5) Habitual use of intoxicating beverages to excess;
- (6) Abuse of narcotics, drugs, or other controlled substances;
- (7) Reasonable doubt as to the loyalty of the person involved to the Government of the United States; or
- (8) Any statutory disqualification which makes the individual unfit for the service.

Additional Factors

In making a determination, the evaluator shall consider the following additional factors to the extent that these factors are deemed pertinent in the individual case:

- (1) The kind of position for which the person is applying or in which the person is employed, including its sensitivity;
- (2) The nature and seriousness of the conduct;
- (3) The circumstances surrounding the conduct;
- (4) The recency of the conduct;
- (5) The age of the applicant or appointee at the time of the conduct;

- (6) Contributing social or environmental conditions;
- (7) The absence or presence of rehabilitation or efforts toward rehabilitation.

Part III
GUIDELINES FOR APPLYING SPECIFIC FACTORS

A. Delinquency or Misconduct in Prior Employment

Delinquency or misconduct in a previous employment may or may not have resulted in dismissal. For purposes of suitability decisions, concern should be focused upon the act or conduct itself and not upon the fact of dismissal. In order to disqualify a person for what amounts to an unsatisfactory employment record, the evidence must show a pattern of conduct which would be incompatible with successful performance in the position applied for or employed in.

The nature of any delinquency or misconduct while in military service should be the governing factor in determining suitability, rather than the type of discharge. Consideration will be given to the findings of the Department of Labor when evaluating the circumstances of an other than honorable discharge which has been submitted to that agency for rehabilitation determination under the provisions of Chapter 80 of title 10, U. S. Code. When the applicant submits an Exemplary Rehabilitation Certificate issued by that department, it should be considered persuasive evidence of rehabilitation with respect to the offense that led to the other than honorable discharge; however, an independent determination must be made on the individual's overall suitability in such cases.

Special procedures are required in cases where there has been a removal for either of the following reasons:

Security. If there has been a removal (or a resignation while under suspension or after the employee has been informed that charges were to be preferred) in the interest of national security or under statutory authority giving the power of summary removal, e.g., section 7532 of title 5, United States Code (Public Law 81-733) or other similar law - and there is not evidence of a subsequent clearance, the case should be referred under section 732.401 of the Civil Service Regulations to the Bureau of Personnel Investigations, U. S. Civil Service Commission.

Prohibited Political Activity. (5 U.S.C. 7321-7327). If there has been a separation for prohibited political activity, the case should be referred to the Office of the General Counsel, U. S. Civil Service Commission, for necessary consideration.

B. Criminal, Dishonest, Infamous or Notoriously Disgraceful Conduct

This is the broadest of the disqualification factors and the one that most frequently overlaps with others. It implies behavior which is outside the normal pattern and is generally unacceptable in our society. The components are discussed separately below. When overlapping occurs, it will

be necessary to apply the guidelines for each particular disqualification and to consider the whole in determining the effect it may have on promoting the efficiency of the service.

1. Criminal Conduct

In its role of leadership as an employer, the Federal government has established a policy providing for the employment of rehabilitated criminals. This policy has as its basis the Prisoner Rehabilitation Act of 1965 (P.L. 89-176). This concept should be applied in all suitability matters involving criminal conduct regardless of whether there was an arrest, conviction, or imprisonment.

A few statutes, such as those dealing with criminal offenses of treason, destruction of public records, and riots and civil disorders, specifically provide that persons convicted under them shall not hold, or shall be disqualified from holding, any position under the United States. These statutes are found in Chapter 735 of FPM. Otherwise, the privilege of holding a position in the Federal Civil Service is not necessarily prohibited by reason of criminal conduct.

Persons who have recently committed serious crimes involving basic questions of honesty, integrity, and character are usually disqualified for Federal employment unless they have established records of rehabilitation. In determining fitness in these cases, the primary concern is with the nature of the criminal conduct rather than the fact of conviction. The circumstances leading to arrests may have a genuine bearing on a person's fitness for Federal employment even though there was no criminal conviction. The fact that an arrest without conviction or forfeiture of collateral is not required to be shown on application forms does not preclude the government from developing and evaluating the facts involved when it makes a fitness determination for employment. Some arrested persons are not brought to trial because of the disappearance of witnesses or the unwillingness of those concerned to prosecute. The Commission and employing agencies will decide the fitness of an applicant or appointee with a record of law violations on an individual basis, taking into account the factors discussed in Part IV below.

(a) Arrests. If a person's record shows that he or she has been arrested on a number of occasions, or for a single serious crime, but that the charges have been dismissed or nolle prossed, more facts are usually needed before a decision is made. In many arrests prosecution is not pressed because a minor is involved or because the victim shuns publicity. Cases will also arise in which the defendant is found not guilty because of procedural or other error not dealing with the merits of the case. All pertinent facts should be considered before making a decision in the case. It should be borne in mind that fitness decisions are administrative in nature and are based on facts which establish a person's conduct and actions, not solely on the legal outcome of a criminal proceeding.

(b) Convictions. Arrest records, officers' reports, and court records are generally considered in deciding cases involving criminal convictions. When an individual has been imprisoned, information concerning his or her prison record, the extent of his or her rehabilitation, and related matters should be obtained from the appropriate prison, probation, and parole officers, and then all the facts must be considered carefully to determine whether employment

of the individual could reasonably be expected to have an adverse effect on the efficiency of the service.

(c) Indictments. An application from a person who is under indictment for a serious offense will be accepted by the Commission, but his or her name will not be certified for appointment. In lieu of a notice of rating, the applicant will be informed that his or her name will not be certified for appointment until official evidence showing the disposition of the case has been submitted. Upon receipt of this evidence, and following any necessary investigation, a suitability determination will be made. Agencies should likewise suspend consideration for employment until a disposition is made of pending criminal charges.

(d) Juvenile crimes. A juvenile offender is one who committed an act in violation of a law, regulation, or ordinance before his or her 18th birthday and the offense for which he or she was charged was finally adjudicated in a juvenile court or under a youth offender law. A juvenile offender is not required to answer affirmatively a question as to whether he or she was convicted for an offense against the law when the question is asked in civil service employment application forms. Arrests which were finally adjudicated in a juvenile court may not be used by either the Commission or an agency to disqualify a person for any civil service examination or for appointment to a position in the competitive Federal service. If the offense was adjudicated in a court other than a juvenile court or under a law other than a youth offender law, the applicant is required to answer affirmatively any questions on convictions which may appear in civil service applications and appointment papers, regardless of the person's age at the time the offense was committed.

The arrest for which a juvenile offender was required to appear before a juvenile court may not be used to disqualify him or her for a position in the competitive Federal service. In such cases, sufficient facts about the overall fitness will be necessary to determine the person's acceptability for Federal employment.

NOTE: A person whose conviction has been set aside under the Federal Youth Corrections Act, which may be applied to a person who was under age 26 at the time of his conviction, or similar State authority need not list a conviction in response to a question asking for this kind of information in any application for Federal employment. If convictions set aside under that act are admitted, they may not be used to disqualify a person for any civil service examination or for appointment in a position in the competitive service.

(e) Expunged Records. Some states authorize expungement of a record of arrest or conviction in certain circumstances. An applicant for Federal employment is not required to admit in his application a record of conviction when that record has been expunged under State or Federal law. Even though a criminal record may have been expunged, the examiner, in making fitness determinations, must concern himself with the facts and circumstances of the behavior initially alleged to have been criminal, not with the legal ramifications of expunged records.

(f) Pardons. If a Presidential or Gubernatorial pardon is granted on the basis of a person's innocence, the application may be accepted for consideration immediately after the date of the pardon regardless of the type of position involved. When there has been a pardon for another reason, full information will be needed for consideration under the Additional Factors shown above.

2. Dishonest Conduct

Dishonest conduct, as used in this context, is an act (or failure to act) which indicates deliberate disregard for rights of others - generally through the use of lies, fraud or deceit - for the benefit of the individual or other persons.

The following examples of dishonest conduct are not intended to exclude other types of conduct which may also involve dishonesty.

- o Misappropriation or misuse of funds
- o Falsification of records or accounts or willful failure to keep accurate records or accounts
- o Theft
- o Offer or acceptance of a bribe
- o Willful disregard for just financial obligations
- o Willful disregard for the truth

In making suitability decisions involving dishonesty it is important to weigh that conduct against the Additional Factors discussed in Part IV below.

3. Infamous or Notoriously Disgraceful Conduct

The disqualification of infamous conduct relates to those few individuals whose social behavior is so bizarre or so clearly aberrant that the conduct in itself evidences depravity. Such things as incest, child abuse, bestiality, self-mutilation, and similar acts, are of such a nature that the employment of the individual clearly would not promote the efficiency of service. In such cases, the behavior in itself would be sufficient grounds for disqualification for any position in the Federal service. Only conclusive evidence of rehabilitation of the individual would warrant a favorable determination.

Notoriously disgraceful conduct is that conduct which is shameful in nature and is generally known and talked of in a scornful manner. It is important to recognize that in most instances the presence of notoriety and public censure would be the prime consideration in making an adverse finding rather than the shameful conduct itself. If the conduct, although shameful in nature, is not generally known and has not been talked of, an adverse finding would not be appropriate unless the conduct is disqualifying under one of the other Specific Factors listed in Part II above. Evaluators must be careful to avoid letting personal disapproval of such conduct influence their decisions. Disqualification in such cases is warranted only when the notoriety accompanying the conduct can reasonably be expected to adversely affect the person's ability to perform his or her job or the agency's ability to carry out its responsibilities.

Approved For Release 2002/03/25 : CIA-RDP79-00498A000200120050-1

Individual sexual misconduct will be considered under the guides discussed above. Court decisions require that persons not be disqualified from Federal employment solely on the basis of homosexual conduct. The Commission and agencies have been enjoined not to find a person unsuitable for Federal employment solely because that person is a homosexual or has engaged in homosexual acts. Based upon these court decisions and outstanding injunction, while a person may not be found unsuitable based on unsubstantiated conclusions concerning possible embarrassment to the Federal service, a person may be dismissed or found unsuitable for Federal employment where the evidence establishes that such person's sexual conduct affects job fitness.

C. Intentional False Statement or Deception or Fraud in Examination or Appointment

This disqualification may be used only if the false statement, deception, or fraud concerns a material fact. A material fact is defined as a fact requiring serious consideration by reason of having a certain or probable bearing on the proper determination of the matter to which it relates. Since an intentional false statement, concealment, or misrepresentation must relate to a material fact to be disqualifying, an ineligible rating should not be made solely on the basis of the statement, concealment, or misrepresentation itself. The disqualifying fact or facts should be cited as the primary basis for action. Intentional false statements, concealments, or misrepresentations may be cited as additional reasons for action.

If intentionally or deliberately made, the concealment of, or a false statement or misrepresentation about, a material fact would normally be disqualifying if discovered during the first year of employment. However, since each case must be decided on its own merits this is a guideline rather than a firm rule. The concealed conduct or act may be of such quality in predicting performance that disqualification would be warranted if discovered more than a year following appointment. Usually, no corrective action should be taken if the intentional falsification, concealment, or misrepresentation is discovered after five years from appointment, unless the person is disqualified by law. The same general rule is applied when appointment is obtained by fraud in examination or appointment. Examples of fraud in examination or appointment are -

- o Impersonation in examination
- o Collusion in examination
- o Assuming identity of a person who has eligibility
- o Altering the grade score on a Civil Service Commission Notice of Rating
- o Altering the condition of discharge on military discharge documents
- o Altering college transcripts to qualify for a position in which specific educational attainment is a requirement.

D. Refusal to Furnish Testimony

Section 5.3 of the civil service rules provides that "all officers and employees in the executive branch and applicants or eligibles for positions therein, shall give to the Commission or its authorized representative, all information and testimony in regard to matters inquired of arising under the laws, rules, and regulations administered by the Commission." The rule

Approved For Release 2002/03/25 : CIA-RDP79-00498A000200120050-1

further provides that, whenever required by the Commission, these persons shall subscribe this testimony and swear to or affirm it before an officer authorized by law to administer oaths.

Refusal of a person to furnish full and complete information when requested may result in disqualification. Before such a rating action is taken, however, it should be ascertained that the person was told of the requirements of this rule and nevertheless, refused to testify. Authority to invoke Rule 5.3 is reserved to the Commission; therefore, agencies should not concern themselves with this disqualification.

E. Habitual Use of Intoxicating Beverages to Excess

Section 7352 of title 5, U. S. Code, provides that "An individual who habitually uses intoxicating beverages to excess may not be employed in the competitive service."

Public Law 91-616, enacted on December 31, 1970, provides that "no person may be denied or deprived of Federal civilian employment or a Federal professional license or right solely on the ground of prior alcohol abuse or alcoholism." This law affords full opportunity for employment consideration to those who have been alcohol abusers but now are rehabilitated or are making genuine efforts to become rehabilitated. It encourages rehabilitation by eliminating penalties for past abuse. While the law prohibits denial of employment solely on the ground of prior alcohol abuse the Federal Government is not required to employ persons who are abusing alcohol on a current and continuing basis.

Alcohol abuse frequently manifests itself in poor employment records, debts, domestic difficulties, convictions, etc. When these factors are present and are attributable to alcohol abuse they should be cited to support disqualification based on habitual use of intoxicants to excess.

Rehabilitation is not necessarily time-framed. There can be strong evidence of rehabilitation covering a brief period of time in one case whereas in another case the individual may have been undergoing rehabilitative treatment for a longer period but has shown little or no positive effort on his own toward rehabilitation.

The final decision must be based on whether there is continuing alcohol abuse, and if not, whether the effects of recent use of intoxicants habitually to excess would reasonably be expected to interfere with job performance or agency mission.

The discussion above refers only to applicant and appointee cases, not to employee cases which develop after the entry suitability determination has been made. In cases arising after the entry suitability determination has been made each agency must be guided by internal procedures developed in accordance with section 201(a), P.L. 91-616.

Approved For Release 2002/03/25 : CIA-RDP79-00498A000200120050-1

F. Abuse of Narcotics, Drugs, or Other Controlled Substances

Public Law 92-255, the Drug Abuse Office and Treatment Act of 1972, states that "No person may be denied or deprived of Federal civilian employment -- solely on the basis of prior drug abuse." Since the language in P.L. 92-255 and P.L. 91-616 (alcohol abuse) is identical for all practical purposes, it may be concluded that the intent and purpose of these laws are the same. Consequently, the same guidelines discussed under Section E above will be applied when determining suitability in cases involving prior drug abuse. The quality of the rehabilitative effort, in the final analysis, must be the controlling factor in both prior drug and prior alcohol abuse cases.

The difference in adjudicating cases involving drugs and alcohol occurs in cases involving current and continuing use. In cases involving current moderate use of alcohol, disqualification, based on use alone, would be inappropriate. The justification for condoning moderate use of alcohol in suitability decisions is based on the fact that such use is generally an accepted form of behavior in our society and in most jurisdictions is legal. Also, moderate social use of alcohol is generally known to have little significant relationship to a person's ability to perform effectively in most civilian positions and has no apparent effect upon the agency's ability to carry out its responsibilities.

The same conclusions cannot be reached when evaluating cases involving current use of drugs. Drug use is not a generally accepted form of behavior in our society and in most jurisdictions is illegal. For this reason employment in the Federal civil service should ordinarily be denied to those who currently use illegal drugs, narcotics, or other controlled substances.

Although methadone is listed in the Schedule of Controlled Substances (Appendix A) as a drug with a high potential for abuse, methadone maintenance has gained widespread usage as a treatment for heroin addiction. Individuals on methadone maintenance in a properly prescribed rehabilitation program, or under a maintenance program administered by a licensed physician, may be acceptable for Federal employment in certain positions when professional medical prognosis establishes that heroin addiction has been controlled. Current use of methadone under any other circumstances should result in disqualification for Federal employment.

The infinite patterns of drug usage and the variety of their varied effects on human behavior preclude full elaboration on all types of drug cases. Appendix A and B should shed some light on this problem.

Each case should be adjudicated on its own merits after needed information on the following factors has been obtained:

- o Patterns of use.
- o How the drug was obtained.
- o Type of drug used.
- o For each type of drug used, the date started and the last date used.
- o Circumstances and environment at the start of drug use.

Approved For Release 2002/03/25 : CIA-RDP79-00498A000200120050-1

Approved For Release 2002/03/25 : CIA-RDP79-00498A000200120050-1

- o Circumstances and environment at the time of discontinuance of drug use.
- o Assistance in cure and rehabilitation - nature of treatment and prognosis.
- o Social behavior and attitude since discontinuance of drug use.
- o History of previous rehabilitation efforts.

A valid determination will depend heavily upon a thorough assessment of each case. Along with all available data on prior drug use and subsequent rehabilitation, consideration must be given to the degree of adverse effect the occupant of the position sought to be filled could bring about in the Federal service.

While continuing use of any controlled substance, including marijuana, LSD, and others that are common and readily obtainable, is disqualifying, no specific period of rehabilitation can be established. The length of time since the last date of drug abuse is only one factor in determining rehabilitation and must be considered with other factors such as the type of drug used, the extent of drug use, and the quality of rehabilitative efforts. To arbitrarily fix a specific period of time would nullify other valid considerations and work counter to the spirit of the rehabilitation programs.

As in the case with alcohol abuse, the above discussion refers only to applicant and appointee cases. Drug abuse cases arising after the entry suitability determination has been made will be handled under agency procedures established in accordance with section 413(a), P.L. 92-255.

G. Reasonable Doubt as to the Loyalty of the Person Involved to the Government of the United States

Traitorous or disloyal acts are disqualifying. In addition, knowing and active membership in an organization whose stated aim is destruction of the constitutional form of government by unconstitutional means with the specific intent to carry out that destruction and engaging in activities individually, or in concert with others, with the intent to destroy this constitutional government by illegal means, will result in disqualification.

In cases involving a reasonable doubt as to the loyalty of the applicant or employee to the Government of the United States, the nexus between disloyalty and inability to serve is self-evident. The problem for suitability examiners arises when there exists a bonafide question of loyalty of a more subtle nature or to a lesser degree than outright disloyalty. Many people mistake opposition to government policies and programs as disloyalty to the system of government. An examiner must be able to make this distinction since his concern when considering the loyalty criteria must relate to a person's loyalty to the form of government and not to a current policy or program. This means that a person's right to peacefully assemble, dissent, and protest shall not be a matter of concern in making a suitability determination. When persons in their protest become involved in violence, destruction of property, interference with rights of others, intimidation, or other criminal conduct, even if that protest is against government policies or programs, consideration as to suitability is proper under Specific Factor number 2.

Approved For Release 2002/03/25 : CIA-RDP79-00498A000200120050-1

Classic examples of protests which are not regarded as involving a question of loyalty are protests concerning United States involvement in the Vietnam War or busing school children to achieve racial balance. Peaceful protest and dissent are rights guaranteed by the Constitution and, therefore, are not matters at issue in making suitability determinations. On the other hand, disloyalty is not protected conduct. Indeed, some of those who protest against policies of the government may also be disloyal, but the examiner should be careful not to translate the act of protest itself to mean a disloyal act has been committed because he personally believes that the government policy is right. Neither should he ignore the protest merely because he believes the policy to be wrong. In each instance sufficient information must be obtained to judge the facts in the individual case, based on objective and impersonal application of the criteria.

H. Any Statutory Disqualification Which Makes the Individual Unfit for the Service

Only those persons who are legally disqualified are automatically excluded from employment in the competitive Federal service. Judgmental factors are not involved where legal bars exist. The various laws, found in Chapter 735, Federal Personnel Manual, contain specific employment restrictions which must be enforced. When a person is excluded by such restrictions notification of ineligibility should be in writing, citing the appropriate statute. For example, Public Law 90-351 (5 U.S. Code 7313) places restrictions on the employment of persons convicted in connection with certain riots. Some agency appropriation acts similarly prohibit salary payment to persons convicted of engaging in a riot. Agency and Commission officials will be guided by the provision of the statutory restrictions when such cases arise.

Part IV
GUIDELINES FOR APPLYING ADDITIONAL FACTORS

As pointed out in discussing Specific Factors above, certain types of personal conduct are disqualifying without regard to the Additional Factors. Examples of such conduct are current use of intoxicants habitually to excess, current drug abuse, and all statutory disqualifications. In the majority of cases, however, consideration must be given to the Additional Factors which are discussed below.

A. The kind of position for which the person is applying or in which the person is employed, including its sensitivity.

The level of responsibility and the sensitivity of the position will have considerable bearing on the reliability, trustworthiness, and ethical behavior expected of the occupant of the position. On the other hand there are certain types of conduct which should result in disqualification regardless of the position. It will not be possible here to match all positions against Specific Factors since each case must be decided on its own merits.

B. The Nature and Seriousness of the Conduct

Examiners should not set unreasonably high standards and view minor transgressions as disqualifying. Neither should they be overly permissive and

Approved For Release 2002/03/25 : CIA-RDP79-00498A000200120050-1

allow the Federal service to become a haven for the untrustworthy, unethical or dishonest. Serious criminal conduct should normally result in disqualification, but convictions of a minor nature, as for mere mischievous conduct, should not be used to disqualify an otherwise eligible applicant or employee. In considering the seriousness of the incident or conduct the acid test is whether employment of the individual will adversely affect the efficiency of the service.

C. The Circumstances Surrounding the Conduct

The nature and seriousness of the actual incident or conduct is important as pointed out above, but of equal importance are the circumstances under which it occurred; therefore, sufficient information must be at hand before this factor can be applied. In many cases there are mitigating circumstances of which the examiner should be aware before an intelligent evaluation can be made. In order to protect the interest of the Government and to prevent an injustice to the individual full facts and circumstances are essential.

D. The Recency of the Conduct

This consideration relates directly to rehabilitation when the issue involves disqualification factors such as drug abuse, habitual use of intoxicants to excess, and criminal, infamous or notoriously disgraceful conduct. In such cases the quality of the rehabilitation effort is more important than the amount of time which has elapsed since the problem existed. An isolated occurrence, which has suitability implications, that took place in the remote past would not likely be disqualifying. However, that decision can be intelligently made only after sufficient investigation establishes that the occurrence was, indeed, isolated. A serious act of misconduct which occurred recently would normally be disqualifying but not before sufficient facts are obtained to determine whether mitigating circumstances are present.

E. The Age of the Applicant or Appointee at the Time of the Conduct

Since youthful indiscretions often are committed in the lapse or absence of mature judgment, suitability decisions should be tempered with that in mind. Courts and public opinion have traditionally been more lenient when dealing with youthful offenders than with adult offenders. Suitability examiners must also take this factor into account to insure that an otherwise qualified individual is not denied employment because of an act committed as a young person when it is established that the appointment or retention of the person would not adversely affect the efficiency of the service.

F. Contributing Social or Environmental Conditions

Although a merit system cannot support fitness standards which unfairly favor one group or class in our society over others, social conscience dictates that persons who are innocent victims of their economic and cultural environment are deserving of employment opportunities which will assist them in their efforts to overcome that disadvantage. In adjudicating suitability issues the examiner should have sufficient information to establish the extent, if any, that social or economic environment played in influencing specific actions or conduct in general.

G. The Absence or Presence of Rehabilitation or Efforts Toward Rehabilitation

Once a person has demonstrated affirmative evidence of rehabilitation, regardless of prior transgressions, a favorable suitability decision may result. Since time limits are arbitrary in nature, rehabilitation should not be defined exclusively in terms of a time frame. Suitability decisions should be based on the quality of positive efforts toward rehabilitation, not upon a specific time span. In other words, the examiner must not presuppose ineligibility merely because of the recency of an occurrence, nor assume eligibility because of remoteness. In either case sufficient investigation must be undertaken to establish whether the person under consideration currently meets fitness requirements and whether current behavior can reasonably be expected to continue.

- (17) Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid.
- (18) Phenazocine.
- (19) Piminodine.
- (20) Racemethorphan.
- (21) Racemorphan.

(c) Unless specifically excepted or unless listed in another schedule, any injectable liquid which contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers.

SCHEDULE III

(a) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system:

- (1) Amphetamine, its salts, optical isomers, and salts of its optical isomers.
- (2) Phenmetrazine and its salts.
- (3) Any substance (except an injectable liquid) which contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers.
- (4) Methylphenidate.

(b) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system:

- (1) Any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid.
- (2) Chorhexadol.
- (3) Glutehimide.
- (4) Lysergic acid.
- (5) Lysergic acid amide.
- (6) Methyprylon.
- (7) Phencyclidine.
- (8) Sulfondiethylmethane.
- (9) Sulfonethylmethane.
- (10) Sulfonmethane.

(c) Nalorphine.

(d) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:

- (1) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium.
- (2) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts.
- (3) Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium.
- (4) Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(5) Not more than 1.8 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(6) Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(7) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(8) Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

SCHEDULE IV

- (1) Barbital.
- (2) Chloral betaine.
- (3) Chloral hydrate.
- (4) Ethchlorvynol.
- (5) Ethinamate.
- (6) Methohexital.
- (7) Meprobamate.
- (8) Methylphenobarbital.
- (9) Paraldehyde.
- (10) Petrichloral.
- (11) Phenobarbital.

SCHEDULE V

Any compound, mixture, or preparation containing any of the following limited quantities of narcotic drugs, which shall include one or more non-narcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

- (1) Not more than 200 milligrams of codeine per 100 milliliters or per 100 grams.
- (2) Not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams.
- (3) Not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams.
- (4) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit.
- (5) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams.

(d) Stimulants or depressants containing active medicinal ingredients; exception.

The Attorney General may by regulation except any compound, mixture, or preparation containing any depressant or stimulant substance in paragraph (a) or (b) of schedule III or in schedule IV or V from the application of all or any part of this subchapter if (1) the compound, mixture, or preparation contains one or more active medicinal ingredients not having a depressant or stimulant effect on the central nervous system, and (2) such ingredients are included therein in such combinations, quantity, proportion, or concentration as to vitiate the potential for abuse of the substances which do have a

depressant or stimulant effect on the central nervous system. (Pub. L. 91-513, title II, § 202, Oct. 27, 1970, 84 Stat. 1247.)

REFERENCES IN TEXT

The date of enactment of this subchapter, referred to in subsec. (a), is the date of enactment of Pub. L. 91-513, which was approved on Oct. 27, 1970.

The effective date of this part, referred to in subsec. (b), is Oct. 27, 1970, the date of enactment of Pub. L. 91-513. See Effective Date Note below.

EFFECTIVE DATE

Section effective Oct. 27, 1970, see section 704 of Pub. L. 91-513, set out as a note under section 801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 811 of this title.

Schedule of Controlled Substances
(Section 812, title 21, U.S. Code)
Controlled Substances Act

§ 812. Schedules of controlled substances.

(a) Establishment.

There are established five schedules of controlled substances, to be known as schedules I, II, III, IV, and V. Such schedules shall initially consist of the substances listed in this section. The schedules established by this section shall be updated and republished on a semiannual basis during the two-year period beginning one year after the date of enactment of this subchapter and shall be updated and republished on an annual basis thereafter.

(b) Placement on schedules; findings required.

Except where control is required by United States obligations under an international treaty, convention, or protocol, in effect on the effective date of this part, and except in the case of an immediate precursor, a drug or other substance may not be placed in any schedule unless the findings required for such schedule are made with respect to such drug or other substance. The findings required for each of the schedules are as follows:

(1) SCHEDULE I.—

(A) The drug or other substance has a high potential for abuse.

(B) The drug or other substance has no currently accepted medical use in treatment in the United States.

(C) There is a lack of accepted safety for use of the drug or other substance under medical supervision.

(2) SCHEDULE II.—

(A) The drug or other substance has a high potential for abuse.

(B) The drug or other substance has a currently accepted medical use in treatment in the United States or a currently accepted medical use with severe restrictions.

(C) Abuse of the drug or other substances may lead to severe psychological or physical dependence.

(3) SCHEDULE III.—

(A) The drug or other substance has a potential for abuse less than the drugs or other substances in schedules I and II.

(B) The drug or other substance has a currently accepted medical use in treatment in the United States.

(C) Abuse of the drug or other substance may lead to moderate or low physical dependence or high psychological dependence.

(4) SCHEDULE IV.—

(A) The drug or other substance has a low potential for abuse relative to the drugs or other substances in schedule III.

(B) The drug or other substance has a currently accepted medical use in treatment in the United States.

(C) Abuse of the drug or other substance may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in schedule III.

(5) SCHEDULE V.—

(A) The drug or other substance has a low potential for abuse relative to the drugs or other substances in schedule IV.

(B) The drug or other substance has a currently accepted medical use in treatment in the United States.

(C) Abuse of the drug or other substance may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in schedule IV.

(c) Initial schedules of controlled substances.

Schedules I, II, III, IV, and V shall, unless and until amended pursuant to section 811 of this title, consist of the following drugs or other substances, by whatever official name, common or usual name, chemical name, or brand name designated:

SCHEDULE I

(a) Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:

- (1) Acetylmethadol.
- (2) Allyprodine.
- (3) Alphacetylmethadol.
- (4) Alphameprodine.
- (5) Alphamethadol.
- (6) Benzethidine.
- (7) Betacetylmethadol.
- (8) Betameprodine.
- (9) Betamethadol.
- (10) Betaprodine.
- (11) Clonitazene.
- (12) Dextromoramide.
- (13) Dextrorphan.
- (14) Diampromide.
- (15) Diethylthiambutene.
- (16) Dimenoxadol.
- (17) Dimpheptanol.
- (18) Dimethylthiambutene.
- (19) Dioxaphetyl butyrate.
- (20) Dipipanone.

APPENDIX B

"Glossary of Drugs, Their Common Names
and Symptoms of Usage"

<u>Name</u>	<u>Street Names</u>	<u>How Taken</u>	<u>Initial Symptoms</u>	<u>Long-term Symptoms</u>
Heroin	H, Horse, junk, know, scat, joy power	injected or sniffed	euphoria, drowsi- ness	addiction, constipation, loss of appetite, convulsions in overdose
Morphine	M, dreamer, white stuff	swallowed or injected		addiction, difficulty in breathing
Cocaine	gold dust, speed balls, coke, flake, stardust	sniffed, in- jected or swallowed	excitedness, shaking	convulsion and depression
Marijuana	tea, grass, pot, reefers, hashish	eaten, smoked, sniffed	euphoria, relaxa- tion, alteration of judgment	unknown
Barbitu- rates	goof balls, downers, peanuts, phennies, yellow jackets	eaten, in- jected	drowsiness, relaxa- tion	severe with- drawl symptoms, convulsions
Ampheta- mines	uppers, bennies, dexies, pep pills, lid proppers	eaten or in- jected	activeness	delusions, hallucinations
LSD	acid, sugar, trips, cubes	eaten	exhilaration, rambling speech	may intensify or cause severe mental problems

- (21) Ethylmethylthiambutene.
- (22) Etonitazene.
- (23) Etoxadrine.
- (24) Furethidine.
- (25) Hydroxypethidine.
- (26) Ketobemidone.
- (27) Levomoramide.
- (28) Levophenacymorphan.
- (29) Morpheridine.
- (30) Noracymethadol.
- (31) Norlevorphanol.
- (32) Normethadone.
- (33) Norpipanone.
- (34) Phenadoxone.
- (35) Phenampromide.
- (36) Phenomorphan.
- (37) Phenoperidine.
- (38) Pirtramide.
- (39) Propheptazine.
- (40) Properidine.
- (41) Racemoramide.
- (42) Trimeperidine.

(b) Unless specifically excepted or unless listed in another schedule, any of the following opium derivatives, their salts, isomers, and salt of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Acetorphine.
- (2) Acetyldihydrocodeine.
- (3) Benzylmorphine.
- (4) Codeine methylbromide.
- (5) Codeine-N-Oxide.
- (6) Cyprenorphine.
- (7) Desomorphine.
- (8) Dihydromorphine.
- (9) Etorphine.
- (10) Heroin.
- (11) Hydromorphinol.
- (12) Methyl-desorphine.
- (13) Methylhydromorphine.
- (14) Morphine methylbromide.
- (15) Morphine methylsulfonate.
- (16) Morphine-N-Oxide.
- (17) Myrophine.
- (18) Nicocodeine.
- (19) Nicomorphine.
- (20) Normorphine.
- (21) Pholcodine.
- (22) Thebacon.

(c) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation, which contains any quantity of the following hallucinogenic substances, or which contains any of their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) 3,4-methylenedioxy amphetamine.
- (2) 5-methoxy-3,4-methylenedioxy amphetamine.
- (3) 3,4,5-trimethoxy amphetamine.
- (4) Bufotenine.
- (5) Diethyltryptamine.
- (6) Dimethyltryptamine.

- (7) 4-methyl-2,5-diamethoxyamphetamine.
- (8) Ibogaine.
- (9) Lysergic acid diethylamide.
- (10) Marihuana.
- (11) Mescaline.
- (12) Peyote.
- (13) N-ethyl-3-piperidyl benzilate.
- (14) N-methyl-3-piperidyl benzilate.
- (15) Psilocybin.
- (16) Psilocyn.
- (17) Tetrahydrocannabinols.

SCHEDULE II

(a) Unless specifically excepted or unless listed in another schedule, any of the following substances whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate.

(2) Any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in clause (1), except that these substances shall not include the isoquinoline alkaloids of opium.

(3) Opium poppy and poppy straw.

(4) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, except that the substances shall not include decocainized coca leaves or extraction of coca leaves, which extractions do not contain cocaine or ecgonine.

(b) Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:

- (1) Alphaprodine.
- (2) Anileridine.
- (3) Benztramide.
- (4) Dihydrocodeine.
- (5) Diphenoxylate.
- (6) Fentanyl.
- (7) Isomethadone.
- (8) Levomethorphan.
- (9) Levorphanol.
- (10) Metazocine.
- (11) Methadone.
- (12) Methadone-Intermediate, 4-cyano-2-dimethylamino-4,4-diphenyl butane.
- (13) Moramide-Intermediate, 2-methyl-3-morpholino-1,1-diphenylpropane-carboxylic acid.
- (14) Pethidine.
- (15) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine.
- (16) Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate.